IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 673 OF 2003.

Nehalchand Laloochand Pvt.Ltd.
a company incorporated under the
provisions of the Indian Companies
Act 1956 having its registered
office at Kantilal House, Mama
Parmanand Marg, Mumbai 400 004. .... Appellant.

Versus.

1. Ganesh G.Naidu,
Prathamesh Horizone, MHB Colony,
Flat No.3 & 4, Ground floor,
B Wing, Gorai Road, Borivali
(West), Mumbai 400 092.

2. Sada Kadam,
Shop No.2, Gokul Nagar No.2,
Suriya Village, Kandivali (W),
Mumbai 400 092.

3. Indusine Media & Communications
Ltd., IN centre, Andheri (East),
Mumbai 400 093.

4. Hariharan Iyer,
Flat No.B/101, Panchali,
"B" Wingh, Indraprastha Enclave,
N.L.Complex, Dahisar (East),
Mumbai 400 068.

5. R.B.Mohite,
Flat No.C/204, Sahdev,
Indraprastha Enclave, N.L.Complex,
Dahisar (East), Mumbai 400 069. .... Respondents.

Shri Birendra Saraf i/by M/s.Prakash & Co. for the
Appellants.

Shri Ravi Kadam for the Respondents Nos.1 to 3.

CORAM : ABHAY S. OKA, JJ.

DATED : 17th January, 2005.

ORAL JUDGMENT.

1. Heard the learned Counsel appearing for the parties. I have also perused the submissions in writing tendered by the parties on record.

2. The challenge in this Appeal from Order is to the Judgment and Order dated 5th July 2003 passed by the learned trial Judge in Notice of Motion No.826 of 2003 taken out by the Appellants, who are original Plaintiffs. The Respondents are the original Defendants. By the impugned order, the Notice of Motion taken out by the Appellants/Plaintiffs has been dismissed by the trial Court. While dismissing the Notice of Motion, the learned trial Judge has held that the trial Court has pecuniary jurisdiction to entertain and decide the suit.

3. With a view to understand the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the suit filed by the Appellants. The Appellants are claiming to be owners of various lands at village Dahisar, Taluka Borivali, Mumbai Suburban District. The Appellants have constructed buildings on the said property and various

flats have been sold to various persons. Admittedly about 500 flats have been sold and occupied by various purchasers. The Respondents Nos.1 to 3 are cable operators. The Respondents Nos.4 and 5 are flat purchasers of flats in the building constructed by the Appellants. The prayer in the suit is for perpetual injunction restraining the Respondents Nos.1 to 3 from trespassing and encroaching or entering upon the property of the Appellants for the purpose of providing Cable T.V. services in the residential complex constructed by the Appellants and also for perpetual injunction restraining the Respondents from obstructing and interfering with the Appellants providing Cable T.V. services in their property from any reputed Cable T.V. Operator to the flats purchasers in the residential complex. The Appellants also prayed for perpetual injunction restraining the Respondents Nos.4 and 5 from acting under the influence, pressure, or instigation of the Respondents Nos.1 to 3 and try and collect other flat purchasers in the building against the Appellants and also from obstructing or interfering with the Appellants providing cable T.V. services to the flat purchasers. In so far as the Motion for interim relief is concerned the prayers are similar.

4. According to the Appellants the area of their property admeasures about 135000 sq.meters and there will be about 45 buildings constructed having about 3000 flats. According to the Appellants with a view to give Cable T.V. services to the flat purchasers, they have decided to take direct connection from the various pay channels and had incurred certain expenses in that behalf. According to the Appellants, the Respondents Nos.1 to 3 have cable connections in the area and they are operating in the said area. According to the Appellants, the Respondents Nos.1 to 3 want to create a monopoly for providing cable T.V. services. The contention of the Appellants is that the Respondents Nos.1 to 3 want to ensure that the flat purchasers take cable connection only from them and from nobody else. The Appellants stated that they are ready and willing to provide cable T.V. services in the flats in the building on their property not through the Respondents Nos.1 to 3 but on the terms and conditions of the Appellants through reputed cable service providers.

5. The Respondent No.1 in his affidavit-in-reply apart from raising the issue of pecuniary jurisdiction of the trial Court, submitted that the Respondent No.3 is a multi system cable operator providing cable net working

and transmission of various cable channels telecast to its subscribers in Mumbai including Dahisar. The Respondent No.1 is the distributor of Respondent No.3 for suburban area of Mumbai and Dehisar. Regarding the allegations of obstruction or interference made by the Appellants, the Respondent No.1 stated that the flat purchasers have a choice to decide as to from whom they want to receive cable T.V. connection and the Appellants cannot compel them to take cable T.V. connection from them. The Respondent No.1 contended that he had spent substantial amount for laying of T.V. cables.

6. The Respondent No.3 has also raised various legal contentions for opposing the Notice of Motion and had supported the Respondent No.1. The Respondents Nos.4 and 5 have also filed their affidavit-in-reply. The Respondents Nos.4 and 5 have stated that initially the Appellants collected Rs.500/- from each of the flat owners for supply of cable T.V. services from one Saibaba Channel. However, this facility was discontinued. On 30th June 2002 all the flat purchasers approached the Marketing Officer of the Appellants and demanded immediate cable connection. It is their case that the Appellants disconnected even the Doordarshan Channels of the respective flat purchasers who tried to

approach the Appellants.

7. There is a rejoinder filed by the Appellants controverting the various contentions raised in the reply.

8. As stated earlier the learned trial Judge decided the preliminary issue of jurisdiction in favour of the Plaintiffs. However, in this Appeal, I am not concerned with the said finding recorded. The learned trial Judge, however, came to the conclusion that no case is made out for grant of interim relief.

9. Shri Saraf, the learned Counsel appearing for the Appellants submitted that admittedly the Appellants are the owners of the property in which the buildings have been constructed by them. He submitted it is for the Appellants to supply the cable T.V. connection to the flat purchasers and the Respondents Nos.1 to 3 cannot enter the property of the Appellants without their consent and provide cable net work to the various flat purchasers. He submitted that there is infringement of the right of the Appellants to enjoy their property without any interference by the strangers. He submitted that a strong prima facie case was made out for grant of interim reliefs prayed for in the Notice of Motion.

10. Shri Kadam appearing for the Respondents Nos.1 to 3 contended that even if the injunction is to be granted as prayed for, about 500 flat purchasers will be affected as their cable T.V. connections provided by the Respondent no.1 will be disconnected. He submitted that the flat purchasers are not made parties to the suit and the order of interim injunction affecting them cannot be passed without they being heard in the matter. He submitted that there is no prima facie case established by the Appellants. He submitted that as the Respondent No.1 has already supplied the cable connections to large numebr of flat purchasers, there cannot be any prohibitory injunction against him.

11. I have carefully considered the rival submissions. It is not in dispute that the many flat purchasers have taken cable T.V. connection from the Respondent No.1. If the prayers in the Notice of Motion are perused, there is some substance in the contention of Shri Kadam that if the said prayers are granted, the flat purchasers will be affected and they will suffer inconvenience.

12. It appears that the Appellants had taken steps to get the cable T.V. services through Saibaba Channel and after a period of time the cable T.V. connections through the said Channel was discontinued. Therefore, there was a dispute between the Appellants and the flat purchasers. Since the Appellants could not provide cable connections to their flats, the flat purchases approached the Respondent No.1 and got the cable T.V.Connection. It is not in dispute that many flat purchasers are having cable T.V. connection through the Respondent No.1 at present. The learned trial Judge has noted this important aspect of the matter. The learned trial Judge has prima facie not accepted the contention of the Appellants that the action of the Respondent No.1 in giving cable T.V. connection to the flat purchasers is an encroachment on the property of the Appellants. The learned trial Judge has noted that telephone and cable T.V. connections are essential facilities in the city like Mumbai.

13. The learned trial Judge has also held that the balance of convenience was not in favour of the Appellants. On the question of irreparable loss also the learned trial Judge held against the Appellants.

14. As stated earlier, admittedly the flat purchasers have taken the cable T.V.connection from the Respondent No.1. There is nothing on record to primafacie show that flat purchasers were compelled by the Respondent No.1 or Respondent No.3 to take the connections from them. On the contrary there is some material on record to indicate that the cable connections provided by the Appellants through some other agency were disconnected and it is for this reason the flat purchasers were required to approach the Respondent No.1. As number of flat purchases have already taken the cable connection from the Respondent No.1, it is very difficult to find fault with the discretionary order passed by the learned trial Judge. It is a very well settled position of law that the order of temporary injunction is a discretionary order and the scope of appeal against such orders is limited. It will be necessary to refer to the Judgment of the Apex Court reported in 1990 (Supp) SCC page 727 (Wander Ltd. & another v/s. Antox India P.Ltd.). The Apex Court held that an appeal against exercise of discretion is said to be an appeal on principle and the Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the one reached by that court was reasonably possible on the material on

record. The Appellate Court would normally not be justified in interfering with the exercise of discretion in Appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

15. There is one more grievance made by Shri Saraf appearing for the Appellants. He submitted that even the Respondents Nos.1 to 3 should not interfere in case the Appellants want to provide cable network to the flat purchasers. Nothing has been brought on record to primafacie satisfy this Court that any such interference is made by the Respondent Nos.1 to 3. On the contrary after the cable network provided by the Appellants to the flat purchasers was disconnected, the flat purchasers approached the Respondent No.1 and hence there is no merit in the said submission also.

16. Considering the facts and circumstances of the case, in my view the trial Court exercised the discretion in a judicial manner and declined to grant interim relied in favour of the Appellants.

17. No interference is called for in the Appeal from order and hence the Appeal is dismissed with no order as to costs.

18. It is needless to say that the findings which are recorded by the trial Court in the impugned order are tentative observations made for the limited purpose of deciding the prayers made in the Notice of Motion and the said observations and findings will not bind the trial Court at the time of final hearing of the matter.

Judge.